

Exhibit A

In the Matter of:

Turing Pharmaceuticals & Impax Laboratories

September 26, 2019

Akeel Mithani

Condensed Transcript with Word Index



For The Record, Inc.

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Turing Pharmaceuticals & Impax Laboratories

9/26/2019

1	3
1 FEDERAL TRADE COMMISSION	1 APPEARANCES (continued):
2	2 ALSO PRESENT: Jimmy Fang, Esq. - Deputy General
3 TURING PHARMACEUTICALS,)	3 Counsel Vyera
4 a corporation,)	4 Anusha Sunkara, FTC Law Clerk
5 and) Matter No.	5 Arindam Ghosh, Ph.D. - FTC Economist
6 IMPAX LABORATORIES,) 161-0001	6
7 a corporation.)	7
8 -----)	8
9	9
10 Thursday, September 26, 2019	10
11	11
12 Room 7104	12
13 Federal Trade Commission	13
14 400 7th Street, S.W.	14
15 Washington, D.C. 20024	15
16	16
17 The above-entitled matter came on for	17
18 investigational hearing, pursuant to notice, at	18
19 9:00 a.m., for the testimony of:	19
20	20
21	21
22 AKEEL MITHANI	22
23	23
24	24
25	25
2	4
1 APPEARANCES:	1 I N D E X
2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:	2 EXAMINATION PAGE
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4 DANIEL BUTRYMOWICZ, ESQ.	4 By Mr. Perlman 7
5 Federal Trade Commission	5 By Mr. Weiner. 231
6 600 Pennsylvania Avenue, Northwest	6
7 Washington, D.C. 20580	7
8 (202) 326-3692	8
9 nperlman@ftc.gov	9 EXHIBIT DESCRIPTION PAGE
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13 SAMUEL W. STELK, ESQ.	13 FTC-FERA-00001472 to FTC-FERA-00001490
14 Dechert LLP	14 GX1110 E-mail with attachemnet, Bates stamped . .114
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<p style="text-align: right;">6</p> <p>1 PROCEEDINGS</p> <p>2 - - - - -</p> <p>3 (The witness was duly sworn.)</p> <p>4 MR. PERLMAN: Could we have counsel</p> <p>5 identify themselves for the record.</p> <p>6 MR. WEINER: Sure. This is Michael Weiner</p> <p>7 from Dechert LLP for Vyera and the witness.</p> <p>8 MR. STELK: Samuel Stelk, also from</p> <p>9 Dechert, for Vyera and the witness.</p> <p>10 MR. FANG: James Fang, F-A-N-G, Deputy</p> <p>11 General Counsel, Vyera.</p> <p>12 MR. PERLMAN: Ms. Sunkara, you can</p> <p>13 introduce yourself.</p> <p>14 MS. SUNKARA: Anusha Sunkara, FTC Law</p> <p>15 Clerk.</p> <p>16 DR. GHOSH: Arindam Ghosh, Economist with</p> <p>17 the FTC.</p> <p>18 MR. BUTRYMOWICZ: Dan Butrymowicz, FTC.</p> <p>19 MR. PERLMAN: Neal Perlman Federal Trade</p> <p>20 Commission.</p> <p>21 Whereupon --</p> <p>22 AKEEL MITHANI,</p> <p>23 a witness, called for examination, having</p> <p>24 been first duly sworn, testified as follows:</p> <p>25 EXAMINATION</p>	<p style="text-align: right;">8</p> <p>1 record.</p> <p>2 Sound good?</p> <p>3 A Yeah.</p> <p>4 Q Did you do anything to prepare for your</p> <p>5 testimony today?</p> <p>6 A We had a prep yesterday, but that's about</p> <p>7 it.</p> <p>8 Q Did you talk with anyone other than your</p> <p>9 lawyers about your testimony today?</p> <p>10 A No.</p> <p>11 Q When you met with your lawyers, did you</p> <p>12 review any documents?</p> <p>13 A Yes.</p> <p>14 Q How many?</p> <p>15 A Approximately 70.</p> <p>16 Q Seventy?</p> <p>17 A Yeah.</p> <p>18 Q So do you understand you're testifying</p> <p>19 under oath today?</p> <p>20 A Yep.</p> <p>21 Q Is there anything that would prevent you</p> <p>22 from providing truthful, complete testimony today?</p> <p>23 A No.</p> <p>24 Q Okay. So one other thing I wanted to go</p> <p>25 over with you before I start to make sure we are on</p>

77

1 A Yes.
 2 **Q Did you communicate with Mr. Shkreli**
 3 **before he was incarcerated?**
 4 A Yes.
 5 **Q How often?**
 6 A I can't tell you. Maybe once a week.
 7 **Q How did you communicate with him?**
 8 A Cell phone or in-person meetings.
 9 **Q Texting?**
 10 A In-person meetings.
 11 **Q Texting?**
 12 A No.
 13 **Q No?**
 14 A It was largely just calling.
 15 **Q Calling on the cell phone?**
 16 A Or in-person meetings.
 17 MR. WEINER: What period of time are you
 18 talking about?
 19 THE WITNESS: Before incarceration.
 20 MR. WEINER: And after? We talked about
 21 earlier before when you were at the company you
 22 were --
 23 MR. PERLMAN: Sure. I can clarify, yeah,
 24 sure.
 25 BY MR. PERLMAN:

78

1 **Q So I'm talking about the time from when**
 2 **you started at Vyera until he was incarcerated.**
 3 **We're clear?**
 4 A Yeah.
 5 **Q So you talked to him once a week after you**
 6 **joined --**
 7 A Yeah, sounds about right.
 8 **Q -- until he -- Okay.**
 9 **And you talked to him by phone?**
 10 A Yeah.
 11 **Q And you talked to him in person?**
 12 A Yeah.
 13 **Q Where would you meet him?**
 14 A At a bar close by or at his apartment.
 15 **Q Where is his apartment?**
 16 A It was a block away from our office.
 17 **Q Where is your office?**
 18 A Thirty-ninth and Third.
 19 **Q Other than the phone calls and in-person**
 20 **meetings, did you communicate with Mr. Shkreli in**
 21 **any other way after you joined Vyera, before he was**
 22 **incarcerated?**
 23 A Sure. I'm sure there were e-mails or
 24 texts, but I don't recall specific ones.
 25 **Q Did you e-mail him from your personal**

79

1 e-mail?
 2 A Sure.
 3 **Q Did you e-mail him from your personal**
 4 **e-mail about Vyera-related business?**
 5 A Maybe.
 6 **Q During that time period are you aware**
 7 **whether anyone else from Vyera communicated with**
 8 **Mr. Shkreli?**
 9 A I would assume Kevin did, but I think that
 10 would be it.
 11 **Q No one else?**
 12 A I'm sure there were people, but I don't
 13 want to speak on their behalf.
 14 **Q Are you aware whether other people**
 15 **communicated with Mr. Shkreli?**
 16 A I'm not aware.
 17 **Q After Mr. Shkreli was incarcerated, did**
 18 **you communicate with him at all?**
 19 A Yeah.
 20 **Q How often?**
 21 A It depends. It would sometimes be once a
 22 week, sometimes once a month, sometimes once every
 23 two months.
 24 **Q How would you communicate with Mr. Shkreli**
 25 **after he was incarcerated?**

80

1 A CorrLinks, calls.
 2 **Q What was the first thing?**
 3 A CorrLinks. It's an inmate messaging sort
 4 of e-mail service.
 5 **Q What would you discuss?**
 6 A From everything from rap music largely to
 7 how he's doing, and he would sometimes forward BD
 8 ideas and stock ideas.
 9 **Q Would you act on those BD ideas?**
 10 A I didn't really think very highly of his
 11 BD ideas because the company didn't have that much
 12 money to do the ideas that he was talking about.
 13 **Q Did Vyera ever act on any of his BD ideas?**
 14 A Yeah, we looked at it. Nothing came
 15 substantial of it.
 16 **Q So other than the CorrLinks, how else did**
 17 **you communicate with Mr. Shkreli in prison, if at**
 18 **all?**
 19 A He would call me.
 20 **Q Call you using what phone?**
 21 A The prison phone.
 22 **Q What's your cell phone number?**
 23 A Cell phone number is [REDACTED].
 24 [REDACTED].
 25 **Q I think you're missing a digit?**

81

A [REDACTED]

Q Oh, [REDACTED]. I heard [REDACTED]. I apologize.

Did you ever talk to him via any other means?

[REDACTED]

82

Q Have you produced those What'sApp messages to your counsel for us to review?

A I gave him my phone.

Q Did you ever visit Mr. Shkreli in prison?

A I did.

Q How many times?

A Once while he was at MDC, which I'm not sure if it was before the sentencing or not.

Q What did you discuss in that meeting?

A I don't recall much.

Q Have you ever mailed anything to Mr. Shkreli?

A I have not.

Q Have you ever asked anybody to mail any --

A I can't --

Q Let me finish.

A Yeah.

Q Have you ever asked anybody to mail anything to Mr. Shkreli?

83

A I don't recall, but maybe some Journal articles that he had asked for, our books.

Q How many times did you ask people to mail things to Mr. Shkreli?

A It can't be more than a couple of times. Again, it's largely just books or one article that he's curious about, not...

Q Who did you ask to mail to Mr. Shkreli?

A Dan Fennessey.

Q How about Maureen Lohry?

A I don't know if the request was -- I know she would send mail, but I don't know if the request of X article was through me.

Q So Ms. Lohry might have been in contact with Mr. Shkreli?

A Sure.

Q During the period after you became a board member of Vyera but before Mr. Shkreli was incarcerated, did you discuss anything related to Daraprim with Mr. Shkreli?

A Before being a board member?

Q Sorry. After being a board member, before he's incarcerated, did you -- let me just rephrase the question.

Before you became a board member -- let me

84

rephrase.

After you became a board member but before Mr. Shkreli was incarcerated, did you discuss anything related to Daraprim with Mr. Shkreli?

A Yeah, sure. He's a shareholder.

Q Did you discuss anything related to Daraprim with any other shareholders?

A Yeah.

Q Which ones?

A Anyone that would call up.

Q Who called up?

A David Chan called up, Opal Eye called up. Armistice called up.

(Reporter requests clarification)

THE WITNESS: Sure. David Chan, Steve Bohad, Opal Eye. That's the few I can remember off the top of my head.

BY MR. PERLMAN:

Q What did you discuss with Mr. Shkreli related to Daraprim during that time period we are talking about?

A I can't recall off the top of my head.

Q Did Mr. Shkreli ever direct you to say anything to any of your business partners?

A Sure. He was helping out with BD at the

85

1 time.

2 Q What did he say?

3 A I don't recall.

4 Q After Mr. Shkreli went to prison, did he
5 communicate with you about Daraprim?

6 A Yeah.

7 Q What did he say?

8 A I don't recall, but it's normal
9 shareholder -- just because he's incarcerated
10 doesn't stop him from being a normal shareholder.

11 Q Did Mr. Shkreli provide you any advice
12 related to Daraprim?

13 A I can't recall any.

86

87

88

125

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

Q All right. You can set that document aside.

MR. PERLMAN: We can go off the record.
(Luncheon recess taken -- 12:02 to 1:04 p.m.)

BY MR. PERLMAN:

Q Welcome back, Mr. Mithani. Do you understand that you are still under oath?

127

126

128

20
21
22
23
24
25

Q What is a backup supplier?

A A backup supplier is just in case your main supplier has issues supplying.

Q Backup supplier --

A Backup supplier for your brand just in case your main supplier has issues supplying

129

1

long-term.

[REDACTED]

131

[REDACTED]

130

[REDACTED]

132

[REDACTED]

197

1 A To track the -- to track the performance
2 of the company.

3 Q Is it also to track where the Daraprim is
4 going?

5 A The weekly reports I get, I don't think
6 they're detailed. Again, I could be wrong.

7 Q Have you spoken with Ms. Kirby about --
8 let me rephrase that.

[REDACTED]

199

[REDACTED]

198

[REDACTED]

200

[REDACTED]

201

[REDACTED]

203

[REDACTED]

202

[REDACTED]

204

[REDACTED]

211

1 good candidate?

2 A Back two years ago, before my hire, yes.

3 Q You can set that document aside.

4 Well, actually, if you could take that

5 back.

6 A Sure.

7 Q Is there anything that you would like to

8 change or update about this document?

9 A I mean I've got to read the whole thing

10 again.

11 Q Go for it.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 BY MR. PERLMAN:

17 Q So I'd like you to turn back, I have this

18 big stack of document here, if you would turn back

19 and find GX1109. I just had a follow-up question on

20 that document.

21 A Say that number again.

22 Q 1109.

23 MR. WEINER: Looks like this.

24 BY MR. PERLMAN:

25 Q You can take a minute to review it and

212

1 just let me know when you're done. To be clear I'm
2 not going to ask any more questions on GX4001.
3 A Got it.
4 (Witness reviews document)
5 THE WITNESS: Go ahead.
6 BY MR. PERLMAN:
7 Q Okay. So if you look at GX1109-001, so at
8 the bottom of that first page, you write to

213

215

- 1 **Q Which friends?**
2 A Maureen Lohry when she was still around.
3 **Q Who else?**
4 A Dan Fennessy when he was still around.
5 **Q Who else?**
6 A I can't think of any others offhand.
7 **Q Who were the lawyers that you communicated**
8 **with?**
9 A I feel like it changed over time, but
10 lawyers I spoke with, I think the firm is Edward
11 King.
12 **Q Edward King?**
13 A Yeah.
14 **Q Did you communicate with Benjamin Brafman**
15 **on behalf of Mr. Shkreli?**
16 A I communicated with one of the associate,
17 Andrea at Brafman Associates, not him, Brafman
18 himself.
19 **Q What's Andrea's last name?**
20 A Zellan.
21 **Q What was your the nature of your**
22 **communication with Ms. Zellan?**
23 MR. WEINER: I need to -- was Ms. Zellan
24 ever a lawyer for you or the company?
25 THE WITNESS: No.

214

216

- 1 MR. WEINER: Okay.

229

1 A Yes.
 2 **Q Any other e-mail accounts?**
 3 A I have a Mithani Akeel, which I don't
 4 think I use.
 5 **Q Any other ones?**
 6 A I can't recall.
 7 **Q Have you provided your lawyers with all of**
 8 **the e-mails that are concerning Daraprim?**
 9 A They have access to my Gmail.
 10 **Q They have access to your Gmail? Okay.**
 11 **Do you ever delete e-mails from your Vyera**
 12 **e-mail address?**
 13 A Sure, yeah.
 14 **Q Why?**
 15 A Just organizational purposes.
 16 **Q Are you aware that the FTC sent Turing a**
 17 **Do-not-destroy letter in 2015?**
 18 A I was not aware in 2015, but all the
 19 e-mails get backed up on the server any ways.
 20 **Q So any e-mails you would have deleted**
 21 **would have been back up on the server?**
 22 A A hundred percent.
 23 **Q Do you ever delete any e-mails from your**
 24 **Gmail accounts?**
 25 A Sure.

230

1 **Q Why?**
 2 A Organization purposes.
 3 **Q Did you ever delete any e-mails related to**
 4 **the Vyera from your personal e-mail accounts?**
 5 A Sure.
 6 **Q So would those be backed up?**
 7 A They would not be backed up, but -- we
 8 only entered a hold on past '17, right? We only
 9 served recently?
 10 **Q I can't testify. It's only you answering**
 11 **questions here.**
 12 A Again, once I was told there was a hold, I
 13 did not delete any e-mails or e-mails in general.
 14 **Q Do you ever text about Vyera-related**
 15 **business from your personal cell phone?**
 16 A Sure.
 17 **Q From your work cell phone?**
 18 A Yes.
 19 **Q Do you have two cell phones?**
 20 A Yes.
 21 **Q Have you produced those documents to us?**
 22 A Yes.
 23 MR. PERLMAN: All right. Why don't we
 24 take a five-minute break. I think I'm all set here,
 25 but I'll let you guys know when I come back.

231

1 Let's go off the record.
 2 (Recess taken - 3:38 to 3:47 p m.)
 3 MR. PERLMAN: All right. Let's go back on
 4 the record. We don't have any more questions.
 5 Do you have any questions?
 6 MR. WEINER: I just have one question.
 7 EXAMINATION
 8 BY MR. WEINER:
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 MR. PERLMAN: Let's go off the record.
 22 (Discussion off record)
 23 MR. PERLMAN: So that's it for us today.
 24 We're going to hold this open. And we can go off
 25 the record.

232

1 (Whereupon, the proceedings concluded at
 2 4:57 p.m.)
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